

H. OLL 83-2805
OLC 83-09638

ROUTING AND RECORD SHEET

SUBJECT: (Optional)

Legislative Program for the Second Session of the Ninety-Eighth Congress

FROM:

EXTENSION

NO.

OLL: 83-2877/2

Deputy Director, Office of Legislative Liaison

DATE

23 November 1983

TO: (Officer designation, room number, and building)

DATE

OFFICER'S INITIALS

COMMENTS (Number each comment to show from whom to whom. Draw a line across column after each comment.)

RECEIVED

FORWARDED

1. EXDIR

23 Nov

DOJ

At the General Counsel's request, attached hereto are Stan's comments on our draft Legislative Program for the Second Session of the Ninety-Eighth Congress.

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cc: DCI
DDCI

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1-3: Please don't tell me that our annual legislative program went to the DCI, or beyond, without OGC input ??? ???

DOJ

3-4: If not.

Qain

DCI
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L-272

OGC 83-09638
22 November 1983

MEMORANDUM FOR: Director, Office of Legislative Liaison

FROM: Stanley Sporkin
General Counsel

SUBJECT: Legislative Program for the Second Session
of the Ninety-Eighth Congress

REFERENCE: Your Memo to the DCI dtd 15 November 1983,
Same Subject

1. I would like to give you my views on the draft Legislative Program which I understand has been circulated internally. I would appreciate your sending this memorandum forward in the event the action is no longer in your office.

2. With respect to the item concerning new legislation in the unauthorized disclosure area, I believe it is important for us to include enhanced protection for intelligence information in the Program. The draft bill which we have on hand has been fully endorsed by the Department of Justice and it received Administration clearance for transmittal to the Congress last March. Not to include the Protection of Intelligence Information item in the Program would be inconsistent with our strongly expressed views on this subject. I might also note that the prepublication review process cannot be a substitute for effective legislation in the unauthorized disclosure area. These are two distinct mechanisms which should not be confused. The prepublication review process is relevant where a prospective author intends to comply with his secrecy agreement; the proposed new criminal statute is designed to deal with those who would make unauthorized disclosures, whether through publication or clandestine transmittal to unauthorized recipients. In my view, congressional efforts to undermine NSDD-84 will proceed regardless of whether the Administration pursues new "leaks" legislation.

our program or
DoD or DOS?

Protection of
Defense (official)
Secrets legislation
could encompass
intelligence, make
the topic politically
less sensitive,
and get us out
of the lead in
pushing new
legislation
(even if we
drafted it
for DoD/DOS).

3. I would urge that the Legislative Program include the legislative proposal we made some time ago with respect to new legislation in the area of CIA real estate and contracting authorities. Clarification of Agency authorities

Page Denied

Next 1 Page(s) In Document Denied

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cc: DDCI
EXDIR

Distribution:

Original - Addressee

1 - DDCI

1 - EXDIR

① - ER

1 - D/OLL

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1 - OLL Subject

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DD/OLL: (23 Nov 1983)

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EDITIONS

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OGC 83-09638
22 November 1983

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General Counsel

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3. I would urge that the Legislative Program include the legislative proposal we made some time ago with respect to new legislation in the area of CIA real estate and contracting authorities. Clarification of Agency authorities



in these areas might prove to be very helpful in facilitating expeditious construction at the Headquarters compound.

4. Finally, I wonder if it is a good idea to include in the Program the proposal to amend the Omnibus Reconciliation Act of 1982 to allow CIARDS retirees below age 62 to escape the cost of living adjustment restrictions for "early" retirees contained in that Act. This subject was negatively addressed by OMB Director Stockman in letters to the Director and to the Attorney General last January, and we should not reiterate the proposal unless we are prepared to appeal the matter to "higher authority."

STAT



Stanley Sporkin

ROUTING AND RECORD SHEET

SUBJECT: (Optional)

Legislative Program for the Second Session of the 98th Congress

FROM:

Clair E. George
Director, Office of Legislative
Liaison

EXTENSION

NO.

OLL 83-2805

DATE

15 November 1983

TO: (Officer designation, room number, and building)

DATE

RECEIVED

FORWARDED

OFFICER'S
INITIALS

COMMENTS (Number each comment to show from whom to whom. Draw a line across column after each comment.)

1. ~

Executive Director

15 Nov 1983

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A.H. OLL 83-2877/2
OLC 83-09638

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L-272

OLL 83-2805

15 November 1983

MEMORANDUM FOR: Director of Central Intelligence

THROUGH: Deputy Director of Central Intelligence
Executive Director

FROM: Clair E. George
Director, Office of Legislative Liaison

SUBJECT: Legislative Program for the Second Session
of the Ninety-Eighth Congress

1. Attached is a compilation of legislative initiatives which we would propose submitting to the Office of Management and Budget (OMB) as the Intelligence Community's Legislative Program for the Second Session of the Ninety-Eighth Congress. As you know, each agency is required to prepare and submit to OMB annually its proposed legislative program for the next session of Congress. In your capacity as Director of Central Intelligence (DCI), a legislative program must be submitted to OMB on behalf of the entire Intelligence Community. The attached compilation of legislative proposals was developed after soliciting and receiving comments from both Agency components and from other Intelligence Community agencies.

2. The inclusion of a proposal in the legislative program does not constitute a commitment or otherwise require the Agency to actively seek its enactment. With this fact in mind, there is still a question as to whether two of the attached items should properly be included as part of the legislative program. These two items concern legislation which would provide criminal penalties for willful unauthorized disclosure of classified information, and a proposal to provide Department of Defense (DOD) with authority to establish and operate proprietary entities. You will recall that both of these proposals were considered and ultimately deleted from the 1984 Intelligence Authorization Bill.

3. Item 98/2 - 14 of the attached program would add a new section 791 to Title 18, United State Code, which would provide criminal penalties for the willful unauthorized disclosure of classified information by federal employees and other individuals provided authorized access to such information. The current espionage statutes make prosecution of such unauthorized disclosures difficult given the

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requirement that the disclosure must be made with "intent or reason to believe that the information is to be used to the injury of the United States, or to the advantage of any foreign nation. . . ." This proposed revision would facilitate the prosecution of unauthorized disclosures of classified information by individuals having authorized access to such information and is certainly an issue worthy of legislative remedy. The question concerning its inclusion within the legislative program for the next session is not whether such a remedy should be sought, but whether the Agency should be out front on this issue rather than the Attorney General. The Department of Justice typically is the lead agency in pursuing revisions of the Criminal Code, particularly when the remedy is being sought to eliminate difficulties encountered in enforcing existing provisions of law. In the immediate case, this proposal is based directly on the statute which was proposed by the interagency group headed by Deputy Assistant Attorney General Richard K. Willard, which group considered measures to reduce unauthorized disclosures. In addition, given the Congressional concern that has been generated by the issuance of National Security Decision Directive (NSDD) 84 and the measures called for in the directive to combat unauthorized disclosures, the political climate for pursuing this type of legislation at the present time is not particularly favorable. One additional factor to consider is that critics of NSDD 84 might require the elimination of prepublication review as a condition for their support of this legislation. In recent hearings held before the Senate Governmental Affairs Committee on NSDD 84, several witnesses suggested that prepublication review could be eliminated if more effective statutes providing criminal penalties for unauthorized disclosures of classified information were enacted by the Congress. In our opinion, prepublication review is a more effective mechanism for preventing unauthorized disclosures than criminal prosecution, and its elimination would be an unacceptable price to pay for passage of an improved criminal statute in this regard. While there thus are substantial risks in pursuing this proposal, there is an urgent need for this type of legislation and the inclusion of such a proposal in our legislative program would not obligate us to actively pursue this legislation if the political atmosphere or other considerations militated against such an initiative.

| | | <u>CONCUR</u> | <u>NONCONCUR</u> |
|--|-------|---------------|------------------|
| Include the unauthorized disclosure proposal in the Legislative Program: | ExDir | <u>✓</u> | <u> </u> |
| | DDCI | <u> </u> | <u> </u> |
| | DCI | <u>✓</u> | <u> </u> |

4. The second controversial proposal included in the attached legislative program addresses certain authority to be provided DOD to acquire and operate proprietary organizations in support of authorized and appropriately coordinated intelligence activities. You will recall that this proposal was included in the 1984 Intelligence Authorization Bill but was deleted by the Senate and House Intelligence Committees pending further review and possible hearings to be conducted on this subject. DOD feels strongly that there is a continuing need for this proposed authority and that the lack thereof adversely affects their intelligence collection efforts.

| | | <u>CONCUR</u> | <u>NONCONCUR</u> |
|---|-------|---------------|------------------|
| Include the DOD proposal in the Legislative Program: | ExDir | _____ | _____ ✓ |
| | DDCI | _____ | _____ |
| | DCI | _____ | _____ |
| | | _____ | _____ |



Clair E. George

29 NOV 1983

Attachment

Should be DOD prepared

We should support

Wf

CENTRAL INTELLIGENCE AGENCY
AND
INTELLIGENCE COMMUNITY
PROPOSED LEGISLATIVE PROGRAM FOR THE SECOND SESSION
OF THE 98th CONGRESS

Part I -- PRESIDENT'S PROGRAM PROPOSALS

98/2 - 1: Freedom of Information Legislation

Relief for the Central Intelligence Agency from the Freedom of Information Act is necessary to end the wasteful and debilitating diversion of intelligence resources and critically needed skills into FOIA matters, to eliminate the danger of court-ordered release of properly classified information, and to maintain the confidence of human sources and foreign intelligence services in the Agency's ability to protect intelligence information provided to it. Prompt consideration and passage by the 98th Congress of legislation to provide effective relief from the resource, operational, and security problems currently besetting the Central Intelligence Agency under the Freedom of Information Act is urgently required.

PART II -- OTHER PROPOSALS

98/2 - 2: Fiscal Year 1985 Intelligence Authorization Act

The Director of Central Intelligence will submit to the Office of Management and Budget a proposed Fiscal Year 1985 Intelligence Authorization Act for transmittal to the Congress.

98/2 - 3: Intelligence Personnel Protection

The proposal to provide federal criminal penalties for acts of violence against officers or employees of the Intelligence Community was passed by both Houses in the 97th Congress as part of a bill which the President declined to approve. The President has stated his support for enactment of this proposal and the Director of Central Intelligence will continue to pursue it in the second session of the 98th Congress.

98/2 - 4: Appointment of an Officer of the Armed Forces as Director of the Intelligence Community Staff

This proposal is designed to provide the same consequences with respect to the appointment of a commissioned officer of the armed forces as Director of the Intelligence Community Staff as are currently provided by statute for the appointment of such an officer as Director or Deputy Director of Central Intelligence. This proposal may become law as part of the Fiscal Year 1984 Intelligence Authorization Act, but will be pursued in the second session of the 98th Congress if it does not.

98/2 - 5: Eligibility for Appointment to Certain CIA Positions

This proposal would authorize the Central Intelligence Agency to establish age criteria for positions within the Agency for which such criteria are necessary for operational purposes. This proposal may become law as part of the Fiscal Year 1984 Intelligence Authorization Act, but will be pursued in the second session of the 98th Congress if it does not.

98/2 - 6: Overcoming Impediments to Naturalization for Certain Persons Contributing to the National Intelligence Mission

This proposal is designed to amend the Immigration and Nationality Act to authorize the waiver of general residency and physical presence, and several other technical requirements, which currently impede the naturalization of certain persons who have made a substantial contribution to the national intelligence mission.

98/2 - 7: Enhanced Personnel Management Authorities for the Defense Intelligence Agency

The Director of Central Intelligence will support legislation to afford Defense Intelligence Agency increased flexibility in the management of its personnel system.

98/2 - 8: Legislation to Improve Overseas Living and Working Conditions for Personnel in the Defense Attache System

The Director of Central Intelligence will support legislation to enhance the ability of the Defense Intelligence Agency to provide more equitable benefits and allowances for personnel in the Defense Attache System.

98/2 - 9: Classified Information Procedures Act Amendments

The Director of Central Intelligence may propose amendments to the Classified Information Procedures Act to ensure that classified information is protected from all possibility of disclosure after indictment in any criminal case.

98/2 - 10: Eligibility for Incentive Awards

This proposal to provide authority for the payment of awards authorized by 5 U.S.C. §4503 to members of the Armed Forces detailed or assigned to the Central Intelligence Agency or to the Intelligence Community Staff may become law as part of the Fiscal Year 1984 Intelligence Authorization Act, but will be pursued in the second session of the 98th Congress if it does not.

98/2 - 11: Domestic Relocation Allowances

The Director of Central Intelligence will propose legislation to relieve inequities currently being experienced by Intelligence Community personnel as a result of statutory restrictions on allowances payable in connection with permanent changes of station within the United States.

98/2 - 12: Legislation to Ameliorate the Adverse Impact of Federal Retirement System Changes on the Central Intelligence Agency's Ability to Recruit and Maintain the Quality Work Force Essential to the Effective Performance of the National Intelligence Mission

The Director of Central Intelligence may propose, either in connection with the supplemental retirement system for new federal employees to be considered by the Congress in 1984, or as an amendment to the Central Intelligence Agency Retirement and Disability System, legislation to deal with the impact of social security coverage and federal retirement system changes, particularly with respect to the adverse effect that indiscriminate increases in retirement ages would have on intelligence operations.

98/2 - 13: Avoidance of Penalty for Mandatory Retirement Prior to Age 62

The Director of Central Intelligence may propose legislation to amend the Omnibus Reconciliation Act of 1982 to exclude individuals who retire prior to age 62 under the mandatory retirement provisions of the Central Intelligence Agency Retirement and Disability System (CIARDS) from the COLA penalty provisions provided by the Omnibus Reconciliation Act for early retirees.

98/2 - 14: Protection of Intelligence Information

There may be a need for legislation which clearly provides criminal penalties for willful unauthorized disclosures of classified information by federal employees and others having authorized access to classified information.

98/2 - 15: Signals Intelligence Protection Act

The Director of Central Intelligence will support legislation to amend the National Security Act of 1947 to better protect sensitive signals intelligence by providing the United States with certain civil remedies in cases involving the intentional unauthorized disclosure of such information by individuals in circumstances where the individual reasonably should know that this disclosure is likely to impair the signals intelligence capability or activities of the United States.

98/2 - 16: Department of Defense Proprieties

The Director of Central Intelligence will support legislation which would grant Department of Defense authority to establish and operate proprietary entities in support of authorized and appropriately coordinated intelligence activities.

MEMORANDUM FOR: DCI

OLL Legislative Program for 2nd Session of 98th Congress.
Clair would like to get this to the printer as soon as
you have approved it.

(FYI, Item 98/2-11 (Domestic Relocation Allowances) has
been partially resolved by the Warner Rider to the
Continuing Resolution, but OLL would still like to leave
a pitch for an allowance schedule in the Legislative
Program.)

Dick